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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,951	02/28/2000	STEPHEN JAMES DAVIS	8697-001-27P	3194

30827 7590 09/09/2002

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EXAMINER

CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
3627	28

DATE MAILED: 09/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/446,951	Applicant(s) Davis
Examiner Michael Cuff	Art Unit 3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Aug 20, 2002
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1, 3, 6-34, and 36-38 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims 1, 3, 6-34, and 36-38 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

- 4) Interview Summary (PTO-413) Paper No(s). _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

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DETAILED ACTION

Applicant's response to a species requirement

1. Applicant's response to an election of species requirement asserts that the examiner did not list the different groups of claims and did not explain why each group lacks unity with each other group. The examiner concurs that a list of the different groups of claims was not provided. The examiner does not concur that an explanation why each group lacks unity with each other group. The examiner has provided a breakdown of species by claims. Because several claimed species are not shown in the figures, three more species have been added. The examiner has phoned applicant's representatives, 9/4/02, to confirm their provisional election with traverse with the newly added species. Applicant's representatives requested, 9/6/02, that the revised election requirement be provided in writing.

2. In response to the examiner not providing an explanation why each group lacks unity with each other group, the examiner quotes 37 CFR 1.475:

“§ 1.475 Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement of unity of invention”). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.”

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No two of applicant's different species meet the requirement of unity as defined by 37 CFR 1.475.

This was stated on page 5, paragraph 3 of the last office action, dated 6/20/02, and will be reiterated in this action including the newly defined species.

3. Applicant assert that no rejections to support the withdrawal of allowance of 38 has been provided. The examiner intentionally did not make new rejections because the action was drawn to an election requirement. The examiner provided reasons for future rejections so as to give the applicant an extra chance at correcting 35 USC 112 issues prior to examination based upon whatever species is elected.

Election/Restrictions

4. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species I No claims, figures 1, 2, and 4 drawn to a step apparatus in lieu of a hitch.

Species II Claims 6-13, figure 3 drawn to a step apparatus built upon a ball hitch.

Species III Claims 1, 36, 37, and 38, figure 5 drawn to a pintle hook hitch with a step assembly.

Species IV Claims 1, 29, 30, 32, 36, and 37, figure 6 drawn to a ball hitch with a step

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assembly.

- Species V Claim 3, not shown, drawn to a mounting portion including a body member adapted to engage a tubular socket.
- Species VI Claims 14-28, not shown, drawn to a mounting portion adapted to be secured to a vehicle by bolting up between a towing hitch and a bolt-up type hitch mounting.
- Species VII Claim 31, not shown, drawn to a step wherein the step portion is selectively secured.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The none of the claims are generic.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special

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technical features for the following reasons: The shown steps have only the feature of a step in common which is not considered to be a "special technical feature" in defining a "step apparatus". Species I thru VII fail to meet the criteria of a group of inventions so linked as to form a single general inventive concept as set forth in MPEP 1850 and 1893.03(d). Claim 1 reads on both species III and IV. Mason (5,584,495) is provided as evidence that no common "special technical feature" as defined by 37 CFR 1.475 exists between species III and IV.

A telephone call was made to Rebecca Goldman Rudich on 9/4/02 to request an oral election to the above restriction requirement, but did not result in an election being made. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

6. Any inquiry concerning this communication should be directed to Michael Cuff at telephone number (703) 308-0610. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113. The fax phone number for this Group is (703) 872-9326. (After Final special fax number (703) 872-9327) The customer service number is (703) 872-9325.

Michael Cuff 9/9/02
Michael Cuff
September 9, 2002